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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/639,618	08/13/2003	Michael D. Mayfield	22870.00	7411

7590 07/29/2004

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EXAMINER

WALLS, DIONNE A

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/639,618

**Applicant(s)**

MAYFIELD ET AL.

**Examiner**

Dionne A. Walls

**Art Unit**

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 19 recites the limitation "the non-inflammable material". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-109701.

JP 10-109701 discloses a refuse box that is equipped with an ashtray.

According to the figures 1, 4, and 7, the English abstract and mechanical translation, JP 10-109701 has almost all of the features that are claimed (i.e. a dome-shaped cover (4) defining an aperture for receiving a plate with narrow, elongated apertures (6) which appear to be of the claimed width, wherein the cover hides cigarette butts from view; a lower section (2); a hinge (29) connecting the cover to the lower section; a tray (13)

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disposed beneath the cover to hold cigarette butts; trash can (3)). Except, JP 10-109701 may not specifically state that there is a lock attached to the cover and the lower section, or that such a lock is a padlock or a recessed lock. However, this limitation is not deemed to patentably distinguish the claims from the JP reference since it would have been obvious to one having ordinary skill in the art at the time of the invention to include a locking means, such as a conventional padlock, to prevent the cans (3) which are disposed in the refuse box from being taken or stolen.

Regarding claims 3-5, 7-9, 16-18, while JP 10-109701 may not specifically disclose circular apertures, it follows that one having ordinary skill in the art would have obviously created circular apertures, instead of narrow-elongated ones, with the claimed diameters, since this is the shape and circumference of smoking articles, and is an obvious choice for aperture design so that the aperture could easily accommodate cigarette butts to be discarded and retained in the tray (13) after smoking.

Regarding claims 11-12, it would have been obvious to one having ordinary skill in the art at the time of the invention to fill the ashtray of JP 10-109701 with sand since ashtrays, conventionally, are filled with such substance in order to ensure that the cigarette will be extinguished upon discarding.

Regarding claims 13-14, it would have been obvious to one having ordinary skill in the art at the time of the invention to attached the lower section to the trash can with, for example, a chain or other securing means, so that said can will not be displaced when the refuse box is moved or transported to other locations.

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6. Claims 1, and 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luedecke (US. Pat. No. 6,454,122).

Luedecke discloses a collection device for smoking debris, which, according to the Figure 1A embodiment, has almost all of the features that are claimed (i.e. a cover (13') defining an aperture (15) which appears to be of the claimed diameter, wherein the cover hides cigarette butts from view; a lower section (8); a hinge (47) connecting the cover to the lower section; a tray/trashcan/inner lining (21) disposed beneath the cover to hold cigarette butts). Except, Luedecke may not specifically state that there is a lock attached to the cover and the lower section, or that such a lock is a padlock or a recessed lock. However, this limitation is not deemed to patentably distinguish the claims from the Luedecke reference since it would have been obvious to one having ordinary skill in the art at the time of the invention to include a locking means, such as a conventional padlock, to prevent the cans (3) which are disposed in the refuse box from being taken or stolen.

Regarding claims 11-12, it would have been obvious to one having ordinary skill in the art at the time of the invention to fill the ashtray of Luedecke with sand since ashtrays, conventionally, are filled with such substance in order to ensure that the cigarette will be extinguished upon discarding.

Regarding claims 13-14, it would have been obvious to one having ordinary skill in the art at the time of the invention to attached the lower section to the trash can (21) with, for example, a chain or other securing means, so that said can will not be displaced when the refuse box is moved or transported to other locations.

***Allowable Subject Matter***

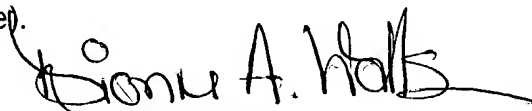
7. Claims 19-20 are allowed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Dionne A. Walls  
Primary Examiner  
Art Unit 1731

July 26, 2004